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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,392	08/22/2001	Jeffrey T. Mason	001P0001	1470

7590

08/01/2002

Rodney F. Brown  
3365 Baltimore Street  
San Diego, CA 92117

EXAMINER

GHAFOORIAN, ROZ

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 08/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/935,392

Applicant(s)

MASON, JEFFREY T.

Examiner

Roz Ghafoorian

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 17, 18 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 and 19-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 17, 18 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 & 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Species A figures 1-4 in Paper No. 5 is acknowledged.

Claims 11-16 refer to Species B (figure 5), which the applicant did not select; therefore these claims will not be examined.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10, 17-18, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 4 recites the limitation "fluid medication" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "fluid" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claims 25 recite the limitation "fluid" in line 8. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No.4623330 to Laby et al, and further in view of U.S Patent No.5505707 to Manzie et al.

Laby teaches gas diffusion-limited controlled release devices. Laby teaches a medication delivery system comprising of an infusion pump, fluid storage chamber a displacement piston, an elastic member, a pump outlet. Laby however, is does not teach a bolus injector system or a drip chamber. Manzie discloses a tubing system with pump for delivering continues fluid flow or fluid bolus to a surgical site, which consists of a drip chamber and a bolus injector (Fig 2)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined these systems, because according to Manzie this system will eliminate the inconvenience or awkwardness for the physician to adjust the clamp to control the fluid flow while also handling the surgical instrument. (Col.1, lines 45-50)

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4. Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No.6247995 to Bryan, and further in view of U.S Patent No. Patent No.5505707 to Manzie et al.

Bryan teaches a bioluminescent novelty item. Bryan's apparatus comprises of infusion pump with 2 pump outlets, an elastic member, and two fluid storage chambers. Bryan, however, does not teach a bolus injector, two pumps, or two springs. Manzie discloses a tubing system with pump for delivering continuous fluid flow or fluid bolus to a surgical site, which consists of a drip chamber and a bolus injector (Fig 2)

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have duplicated the pump and spring because the applicant has not disclosed that 2 separate pump and two separate springs can provide an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with one pump and spring, as described in Bryan because both apparatus perform the same function. *In re of Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) it would have been an obvious matter of design choice to modify Bryan to obtain the invention as specified in claim.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined these systems, because according to Manzie this system will eliminate the inconvenience or awkwardness for the physician to adjust the clamp to control the fluid flow while also handling the surgical instrument.  
(Col.1, lines 45-50)

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**Conclusion**

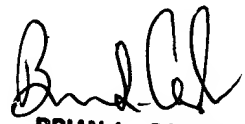
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S Patent No.6159188 to Laibovitz et al.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

RG  
July 24, 2002

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700